IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO,

WESTERN DIVISION

Tronsen

v. Toledo-Lucas County Public Library

(herein after also as 'TLCPL')

3:08 CV 148 JUDGE CARR

Memorandum in Opposition to Defendant's Motion for Summary Judgment

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

Plaintiff answers Defendant's MOTION for s.j. as follows:

Plaintiff says that there remain one or more Factual matters that have not been adjudicated, including the following:

A) Whether or not the premises of the TLCPL is a public forum or not. Plaintiff says that there is no other ruling, specific or general, that has considered the unique, individual characteristics of the TLCPL.
B) Whether or not Plaintiff violated the library 'Code of Conduct', as suggested-alleged by the defendant.

Plaintiff says a factual determination of the above is necessary for a reliable, factual-accurate and proper judgment in this matter.

Plaintiff has repeatedly asked the defense for the following:

a) A copy of any audio and/or video recording of the incident that precipitated this lawsuit.
b) A list of all authorized events at library premises including but not limited to displays, speeches, hearings, discussions that were open and available to members of the public (non-library employees).

Mr. Borell has stalled, in spite of the fact that the knowledge of the above would assist the court in coming to a reasoned, informed decision regarding these and other matters.

Plaintiff says another factual matter is in dispute:

Defendant's pleadings include the following:

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1) "A woman patron was using the terminal next to the plaintiff."

That statement, that claim, that allegation is **FALSE**.

2) "On December 20, 2007, the plaintiff was notified in writing that his conduct violated the defendant's posted Code of Conduct and that his library privileges were suspended for six months."

(both from page 3 of Defendant's REPLY BRIEF)

That claim, along with the disputed 'fact' (actually allegation) of a violation of the library code, Is FALSE; undeniably, certifiably **FALSE**.

Mr. Borell sprinkles his response with the word 'harassment'. Apparently Mr. Borell either
a) Is too lazy to look up the Black's definition of that word, or,
b) he believes he can 'get one past' the court and Plaintiff:

For fear of a copyright infringement, I shall paraphrase instead of quote:

Harassment is a continuing if not persistent annoyance.

Plaintiff did not harass anyone in the library with any stalking, staring, or persistent eye contact.

Mr. Borell's pleading suggests in his pleading that Plaintiff and the library complainant were seated together , as in 'side-by-side'; THIS SUGGESTION IS FALSE & MISLEADING (**Plaintiff says this represents a factual discrepancy**).

Plaintiff says that the complete interaction between himself & the library complainant lasted approximately 5 SECONDS; there was **NO CONFRONTATION, NO ARGUMENT, NO HARASSMENT.**

Plaintiff believes that the Main location of the TLCPL has 'wall-to-wall' coverage with recording video cameras in the public area(s) of the library;

Plaintiff has repeatedly asked the defendant for a copy of a video recording of this 'incident', but after many requests, Borell 'regrettably' says that the library may have discarded it or destroyed it...

Mr. Borell refers to the Kreimer and the Neinast cases:

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Plaintiff was unable to ascertain the relevance here; neither case tells us of any communication(s) attempted or complained of by either the library or by of Plaintiffs in those cases.

While the library certainly may make reasonable rules,

1. In our case, Plaintiff DID NOT BREAK OR VIOLATE ANY LIBRARY RULE OR THEIR 'Code of Conduct' or any other known rule or regulation.

2. Any library rules, regulations are subservient to the Constitution of the United States ; library (or other public rules) cannot supersede the Constitution. If they're a conflict between the rules (regulation(s), by-law(s), Code(s) THE CONSTITUTION PREVAILS!

Mr. Borell might wish us to believe that the Plaintiff is solely responsible for the 'need' of the library to employ & assign ANY given number of security personnel, deputy sheriffs, and/or Police (etc.), but I don't think that accurately tells us anything.

Plaintiff's attempt at communication was perhaps clumsy, and probably unwanted; but it certainly didn't break the mood or function of anyone else; Plaintiff says the library complainant's actions constitutes a Heckler's veto.

Plaintiff further says the rule for the complainant and the library should be 'there's nothing wrong with ASKING' (once). After an invitation to communicate, to go to the café on the library premises, or to meet & converse (as MANY DO in the library) IS DECLINED, this incident MIGHT have ripened to harassment, BUT IT DID NOT.

Mr. Borell's submissions offered in defense suggest some continuing harassment of library staff attributable to Plaintiff.

PLAINTIFF ASKS: **WHERE'S THE BEEF?** Are there any documents that support this statement-suggestion? Is any testimony available? Any video recordings of other incidents? **WHERE'S THE BEEF?**

Respectfully presented,

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FACTS

1.1 On or about December 31, 2007, Plaintiff was escorted to the area of the library where he was questioned as to his identity and involvement in an incident of about 2 week's prior occurrence at the Main branch – location of the library by a uniformed officer. This occurred with the vision of Plaintiff's friend & acquaintance, Mr. Donald Beachey. Plaintiff was embarrassed and felt a great indignity to his person upon being interviewed by the officer involved in full public view. Prior to this incident, Plaintiff and Mr. Beachey had held conversation(s) inside the library, and Plaintiff says said conversations constituted a (lawful) assembly within the meaning of the First Amendment; Plaintiff had also attended one or more meetings of the library Board at a location within the library premises. Plaintiff subsequently received a letter from a library employee on library letterhead informing him that his library privileges including permission to go upon any and all premises of the defendant were suspended for a period of six months.

1.2 This is not the first time Plaintiff has suffered a similar penalty-consequence; the nature of Plaintiff's complaint is a continuing if not persistent nature, a pattern of abuse of Plaintiff's Constitutional rights. Plaintiff says that in this matter is a part of a persistent, continuous and long-standing pattern, where by Ohio courts have REPEATEDLY, Egregiously FAILED to protect the Constitutional rights of it's citizens-residents, only (some of them) achieving justice and redress for prior wrongs from the United States Supreme Court; Plaintiff pleads with this court to remedy this awful situation by accepting jurisdiction over the prior incident dating from 2005 to correct a GROSS INJUSTICE. Plaintiff was denied redress in Ohio courts by the flimsiest of rationale, faulty and obviously prejudiced logic meted out BLATANTLY biased to protect the interest(s) of government done at the expense of the Plaintiff's CONSTITUTIONAL RIGHTS. The reasoning-logic the state court used was Bizarre, unrelated to the case, and totally inappropriate .

1.3 Even if this court refuses direct intervention in the prior matter, Plaintiff says because the conduct complained by Plaintiff is of a nearly identical, serious and continuing nature, the past history of Defendant must be taken into account in determining the nature and amount of the damages due to him.

ALLEGATIONS OF CONTROLLING LAW

Plaintiff alleges the following:

- The freedom of speech (and the press) have broad scope[1].
- Freedom of press, freedom of speech, freedom of religion are in a preferred position[2].
- "As a general matter, peaceful picketing & leafleting are expressive activities involving "speech" protected by the First Amendment[3]."

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[1] Lovell v. Griffin 303 U.S. 444 (GA, 1938)

[2] Jones v. Opelika 319 U.S. 105 (1943) (in Murdock v. Pennsylvania, 319 U.S. 105 (PA, 1943) the taxation provision allowing taxation of Jehovah's Witnesses affirmed in Jones was vacated)

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- The relatively minor inconvenience of disposing of unwanted paper is an acceptable burden at least so far as the Constitution is concerned[4].
- Minor upsets, annoyances, offenses, impositions, even though objectionable, do not reach the standard to trigger allowable restrictions.
- Restrictions, when valid, must be Narrowly Drawn to accomplish a compelling government interest[5].
- Plaintiff alleges that the defendant does not possess the legal authority needed to imposed the penalty-consequence told to Plaintiff.
- Seemingly 'inconsequential' incidents: Courts will zealously guard Constitutional, especially First Amendment protections[6], even regarding incidents that may seem unimportant.

The defendants cite paragraph 18 of the library 'Code of Conduct', which reads:

> **"18. Verbal and/or physical harassment of staff or patrons to include but not limited to: using threatening language, stalking behavior, i.e., following persons on premises without their permission: staring or watching persons in a manner which could reasonably be construed as threatening."**

PLAINTIFF RESPECTFULLY REMINDS THE COURT THAT THIS PROVISION DOES NOT MENTION ANYTHING REGARDING PRODUCING OR DISTRIBUTING ANY WRITTEN MATERIAL(S) which defendant claims justified their action(s).

1. That Plaintiff does not cede, waive, or otherwise surrender his state and Federal Constitutional rights, privileges, protections, or immunities as the library door[7]. With regard to the library and our case: Library visitors are not compelled to attend the library as students are compelled to attend school; therefore, government has a lesser duty to protect visitors-patrons, even from unwanted communication(s), as in the cases referenced(**Tinker** & **Hedges**).
2. Plaintiff says he, even if the conduct Defendant has alleged is or was true, was violated in the exercise of his rightful First and Fourteenth amendment Freedoms & Rights (freedom of speech-expression and of assembly)
3. Plaintiff alleges that the action against him by the defendant violated his Fifth Amendment right(s) of due process; further that the defendant's action(s) constituted constitutes a violation of the Ohio State Constitution, Article 1, and section 11.
4. That the 'library code of conduct' cited by defendant or any alleged portion or application thereof is and must remain subordinate to the principles and protections afforded citizens of the United

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[3] U.S. v. Grace 461 U.S. 171 (D of C, 1983)
[4] Bolger v. Young's Drug products, 463 U.S. 60 (D of C, 1983)
[5] U.S. v. Grace 461 U.S. 171 (D of C, 1983)
[6] Glasson v. City of Louisville 518 F. 2d 899 (KY,1975)
[7]. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."
Tinker v. Des Moines School District 393 U.S. 503 (IA,1969); Hedges v. Wauconda 9 F. 3d. 1295 (IL, 1992)

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States under the terms and conditions of the CONSTITUTION of the United States of America, AND the constitution of the state of Ohio, as interpreted and explained as consistent with the Federal Constitution in both application and facially.

Discussion:

I would rather be exposed to the inconveniences attending too much liberty than to those attending too small a degree of it. Thomas Jefferson (1743 - 1826) *to Archibald Stuart, 1791*

The library seeks to prevent harassment at its locations; this is a worthwhile objective, BUT:

a) The definition of harassment is a continuing if not persistent annoyance, pestering, etc.
b) it must not be done at the expense of freedom of speech

Plaintiff says: there was no harassment in this matter; the only contact between plaintiff & the complainant lasted only about 5 seconds, there was NO physical contact, NO stalking, NO staring.

The general rule is that protected speech is allowed at public places, though it may be offensive, annoying, offensive, etc. Plaintiff says a minor inconvenience or annoyance as we have here does not fit the criteria of a "compelling government interest".

Plaintiff says that two types of challenges to Restrictions on speech – expressive conduct are recognized[8]:

a) Facial (that is, as written, whether as a policy, stature, by-law, ordinance or other written matter.
b) As Applied: That government wrongfully enforced- applied some written or unwritten consequence or penalty upon an unwilling individual. 'As applied' may be either follow – result from some written edict -or- an ad hoc spontaneous decision, policy or idea.

Standard(s) to be applied:

In the matter of ***Whitney v. California, 274 U.S. 357***, (1926) the USSC upheld a conviction of the California 'criminal syndication act'. Justice Brandeis opined:

"Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive."

In ***Hustler v. Falwell 485 U.S. 46*** (1988) we read the following:

[8] Faustin v. City & County of Denver 423 F. 3d. 1192 (2005)

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"...if a speaker's opinion causes offense, that consequence is a reason for according it Constitutional protection."

"Respondent (Falwell), a nationally known minister and commentator on politics and public affairs, filed a diversity action in Federal District Court against petitioners, a nationally circulated magazine and its publisher, to recover damages for, inter alia, libel and intentional infliction of emotional distress arising from the publication of an advertisement "parody" which, among other things, **portrayed respondent as having engaged in a drunken incestuous rendezvous with his mother in an outhouse.**

WHAT A FAR CRY FROM OUR CASE!

Falwell's claims were denied.

In ***Brandenburg v. Ohio 395 U.S. 444*** (1969), the following language is found:

Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. 4 Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of Whitney v. California, supra, cannot be supported, and that decision is therefore overruled.

Content based restrictions on Constitutional freedoms have an extremely difficult burden of justification. Because defendant's actions (as claimed) were based on the CONTENTS of a note allegedly passed to another library patron-visitor, and because the actions (penalty-consequence imposed) were taken by a governmental entity, these restrictions are subject to 'strict scrutiny'.

Plaintiff further says-argues that:

1. Speech-expression under our constitution must fall into one of two categories: either it is 'protected' or it is 'not protected'; there is no middle territory.

By default, speech falls into the protected category; those seeking to justify a restriction carry the legal burden of proving that it is Not Protected speech-expression.

2. Protected speech-expressions may NOT be restricted merely because they are annoying, offensive, objectionable, even intrusive[9]; our constitution (through opinions previously rendered, including many by the U.S. Supreme court, set a much higher standard.

3. Non-protected speech-expressions include and are strictly limited to the following:
   - Obscene speech, including child pornography
   - Speech that invites harm in a serious & and/or immediate threat to persons or property; mere suggestion of later or far-away civil unrest, commotion or perhaps even far-away (not immediate in time & distance proximity) do not qualify.

[9] Edwards v. South Carolina 372 U.S. 229 (1963); Carey v. Brown, 447 U.S. 455 (1980); Glasson v. City of Louisville 518 F. 2d 899 (KY, 1975); Spence v. Washington 418 U.S. 405 (WA, 1974); Virginia v. Black 538 U.S. 343 (VA, 2003);Roth v. U.S. 354 U.S. 476 (NY, 1957).

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Plaintiff proposes an example of a non-protected utterance: An anti-abortion speaker, in a public place, passionately moves a group of listeners to the point of being upset-disturbed that abortions are taking place (nearby). So far, Plaintiff says this is protected.

However, if a speaker utters something such as "Let's go to the abortion clinic and BURN THE PLACE DOWN!" (While displaying a can of gasoline)... Plaintiff says this extremely uncivil speech, coupled with ability to carry out a specific threat.... Would be actionable, in & of itself.

OUR case is Clearly in the former category (protected speech) , there is little if any doubt.

Recently a case presented that portends to have a justification for considering the content of what certainly Is NOT unprotected speech:
In the matter of ***FRYE et al v. Kansas City KS police et al***, (Frye 260 F. Supp. 2d, 2003) Eighth Circuit # 03-2134 (MO, 2003), [viewable: http://www.ca8.uscourts.gov/opndir/04/07/032134P.pdf]
Protesters displayed graphic anti-abortion photographs, including one of a decapitated child-fetus , near a busy street. Police were summoned and visited the scene multiple times. At the first visit, they explained to the protesters that they could continue their display-protest so long as there was no hazard to traffic.
At the second visit, the protesters were told of the police & motorist concern(s) for a traffic hazard and possible accident (due to people 'gawking' at the signs). The portesters were invited to move further away from the street, but refused. They were arrested for loitering and later filed a civil suit against the police. Summary judgment was awarded to the police defendants at the District court level; Plaintiff's appealed to the Eighth circuit, which appeal was Denied.
Plaintiff here says that in this case, the actions were considered as allowable under the Constitution because of the serious nature of (possible) Secondary harm (a traffic accident).

Heckler's Veto: The first amendment knows no Heckler's veto[10]; that is, no listener has the power to (or influence those in authority to) silence a speaker because they don't happen to agree with the (contents, message, opinion(s) etc.) of a speaker[11]. In Cohen, this principle governed a case where an individual wore a jacket with the words "FUCK THE DRAFT" in a courthouse. Cohen was convicted of a breach of the peace; this conviction was Overturned by the US Supreme Court.

Location-Venue of the communication: There is a modern distinction that is not mentioned in the constitution between categories of types of publically-owned premises-properties. These are named as either a public forum or a non-public forum.
A public forum may category – designation may result by either of two (or more?) routes:

1. A traditional forum such as a park, sidewalk, public street, etc.

[10] Cohen v. California 403 U.S. 13 (CA, 1971); Robb v. Hungerbeeler 370 F. 3d. 735 (MO, 2003)
[11] See also Hedges v. Wauconda 9 F. 3d. 1295 (IL, 1992)

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2. A designated forum, where either words of actions of the owners- managers of a premises have allowed for discussions, talks, speeches, displays, bulletin boards, or other communicative or expressive activities.
3. Plaintiff says that because this distinction is of modern invention, the court may overlook it at it's pleasure, and instead rely on the bright-line rule against restrictions based on content, as the US Supreme court has directed[12].

Plaintiff says that the premises of the defendant are public fora of the second type. In the memory of the Plaintiff, the following activities have occurred at or upon said premises:

At the Holland Branch:

- The treasurer of the Springfield schools held a discussion of school finances where the public gave input.
- Signatures were gathered regarding an initiative to the General Assembly

At other locations:

- The city of Toledo held a public discussion regarding a 'Costco' store.
- The University of Toledo held an open house
- Caroline Kennedy, daughter of the late President John F Kennedy endorsed a candidate for nomination for political office (Main location).
- Film Festival (April 3 - May 8, 2008, Main)
- Display of various religious garments: Main library, 2007; exact dates unavailable
- Mayor Carty Finkbeiner addressed local business leader regarding matters of interest to the community.

In ***Marsh v. Alabama 326 U.S. 501*** (AL, 1946) the court ruled that First Amendment rights extend even to private property. This was the case of a 'company town' where the streets, sidewalks, etc. were owned by a private entity. They said:

> "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

Plaintiff further says that even if the library premises is found not to be a public fora, the significance of the above distinction in our case should be minimized if not disregarded since the action he complains of was carried out by governmental employees, including the Toledo Police, regarding a public facility.

Vagueness, overbreadth: Courts often rule that statutes, ordinances, regulations, codes, and by-laws are Unconstitutionally vague and/or overbroad – overreaching.

In ***Hill v. Colorado 530 U.S. 703*** (CO, 2000) we read:

> A statute can be impermissibly vague for either of two independent reasons.

[12] Boos v. Barry 485 U.S. 312 (D of C, 1988)

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First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.

Second, if it authorizes or even encourages arbitrary and discriminatory enforcement. *Chicago* v. *Morales*, 527 U.S. 41, 56—57 (1999).

Plaintiff here says that even if found to be applicable, the library Code of Conduct (or, the current application) is constitutionally defective for both the above reasons.

Content based-restrictions:

Content-based restrictions are suspect in the law if not impossible to justify[13].

Respectfully presented,

4/21/2008

[13] NY Times v. Sullivan 376 U.S. 254 (AL, 1964);Cohen v. California 403 U.S. 13 (CA, 1971)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

Tronsen

v. CERTIFICATE OF SERVICE

Toledo-Lucas County Public Library

Plaintiff on the ________________ day of _________ 2008

Hereby affirms that he served copies of

____

and ____

and ____

Upon (Defendants) ______________________________

and upon the court By Personal Service

or- placing copies in the mail of the US, proper postage affixed

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

Tronsen

v. CERTIFICATE OF SERVICE

Toledo-Lucas County Public Library

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and ____

and ____

Upon (Defendants) ______________________________

And upon the Court By Personal Service .-or- placing copies

In the mail of the U.S. with proper postage affixed.

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship and, as such, under the protection of and guaranteed by, the United States. The very idea of government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in these counts that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the U.S."	United States v. Cruikshank, 92 U.S. 542, (1875, LA)	Criminal Indictments defective
	DAVIS v. COMMONWEALTH OF MASSACHUSETTS. [167 U.S. 43, 44] May 10, 1897.	Use of Commons without a permit conviction upheld.
The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in section 4 (Comp. St. 1918 , 10212d) punishes conspiracies to obstruct as well as actual obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime. Goldman v. United States, 245 U.S. 474 , 477 38 Sup. Ct. 166, 62 L. ed. 410. Indeed that case might be said to dispose of the present contention if the precedent covers all media concludendi. But as the right to free speech was not referred to specially, we have thought fit to add a few words.	Schenck v. U. S. 249 U.S. 247 (state ? (1919)	An individual who passed out pamphlets to prospective military recruits was conv. of violation of the Espionage Act. Affirmed. Famous quote: The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic
A police measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive.	Whitney v. California 274 U.S. 357 California, 1926	California criminal statue upheld. (Over-turned in Brandenburg v. Ohio)
With respect to these contentions it is enough to say that in passing upon constitutional questions the court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the state must be tested by its operation and effect.	Near v. Minnesota 283 U.S. 697 (MN) (1930-31)	USSC O.T. a St Paul abatement order, Freedom of the Press/Fourth Amendmnt.
Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution.	**DE JONGE v. STATE OF OREGON, 299 U.S. 353 (1937)**	OR crim syndication (assembly) Statute is UNC.
Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not	Lovell v. Griffin 303	JWs;A criminal conviction overturned. "The ordinance cannot be saved because it relates to

abridge the individual liberties secured by the constitution to those who wish to speak, write, print or circulate information or opinion. This freedom embraces the right to distribute literature. **The right of freedom of speech and press has broad scope**	U.S. 444 (1938) Georgia	distribution and not to publication. 'Liberty of circulation is as essential to that freedom as libert[y] of publishing; indeed, without the circulation, the publication would be of little value.' Ex Parte Jackson 96 U.S. 727
City ordinance requiring a permit is unconstitutional. If state courts error, Federal courts may intervene	Hague v. Comm. For Ind. Org. 307 U.S. 496 (1939)	N.J. ordinance; Right to assemble & distribute literature. Violation O.T.
Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.	**COX v. NEW HAMPSHIRE, 312 U.S. 569 (1941)**	JW conviction "Parade or procession on a public street without a permit' afformed.
'The word 'offensive' is not to be defined in terms of what a particular addressee thinks. ... The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight.	CHAPLINSKY v. STATE OF NEW HAMPSHIRE, 315 U.S. 568 (1942)	JW conviction Upheld; EXTREME epithets
Freedom of press, freedom of speech, freedom of religion are in a preferred position.	Jones v. City of Opelika 319 U.S. 105 (1943)	JW's, PA Business License req. tax Affirmed (Pennsylvania)
Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.	**MURDOCK** v. **PENNSYLVANIA** (CITY OF JEANNETTE) 319 U.S. 105;**1943**	Tax affecting JWs Vacated Jones v. Opelika
If therefore use of the word or language equivalent in meaning was illegal here, it was so only because the statute and the order forbade the particular speaker to utter it. When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and so becloud even this [323 U.S. 516, 537] with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end. A restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment.	Thomas v. Collins 323 U.S. 516 (TX) (1945)	Restrainin g order r union organizin g O.T.
'company town' where JW's wanted to distribute literature & solicit membership. Ownership does not always mean absolute dominion. **"The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."**	Marsh v. Alabama 326 U.S. 501 (1946)	Company town; O.K. for JWs to proselyte, distribute flyers
The principle of a free press covers distribution as well as publication	Winters v. New York 333 U.S. 557 (1948)	N.Y. bookseller conv. Of selling a crime magazine. **REVERSED**
The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in De Jonge v. Oregon, 299 U.S. 353, 365 , 260, it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.	**TERMINIELLO V. CITY OF CHICAGO , 337 U.S. 1 (1949)**	Disorderly conduct verdict O.T.
The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the	Roth v. U.S.	Obscen[e] speech;

States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests "b) **The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. P. 484.** **(c) All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests; but implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. Pp. 484-485. [354 U.S. 476, 477]**	354 U.S. 476 (NY, 1957)	Conv. upheld
The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views. "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. . . . There is no room under our Constitution for a more restrictive [372 U.S. 229, 238] view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." **Terminiello v. Chicago, 337 U.S. 1, 4 -5. As in the Terminiello case, the courts of South Carolina have defined a criminal offense so as to permit conviction of the petitioners if their speech "stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand."** Id., at 5. **The 14th Amendment does not permit a state to make criminal the peaceful expression of unpopular ideas.**	Edwards v. S. Carolina 372 U.S. 229 (1963)	Breach of Peace convictions O.T. Peaceful anti-segregation demonstrat n at state capital.
Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment' to the principle that debate on public issues should be uninhibited, robust, and wide-open.	NY Times Co v. Sullivan 376 U.S. 254 (1964)	Alabama libel case. Civil award O.T.
	GARRISON v. LOUISIANA, 379 U.S. 64 (1964)	Civil rights demonstratior Conv. O.T.
Any restriction on expressive activity because of its content would completely undercut the 'profound national commitment' to the principle that debate on public issues should be uninhibited, robust, and wide-open.	NY Times Co v. Sullivan 376 U.S. 254 (1964)	Alabama libel case. Civil award O.T.
Yet, a "function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with [379 U.S. 536, 552] conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or	COX v. LOUISIANA , 379 U.S.	Breach of Peace Conv. OT

punishment . . . . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." "A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."	536 (1965)	
That this *liberty* is often carried to excess; that it has [*151] sometimes degenerated into *licentiousness*, is seen and lamented, *but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped* [*17] *from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America*. No regulations exist which enable the Government to suppress whatever calumnies or invectives any individual may choose to offer to the public eye, or to punish such calumnies and invectives otherwise than by a legal prosecution in courts which are alike open to all who consider themselves as injured."**	CITY OF CINCINNATI, APPELLEE, v. BLACK, APPELLANT **8 Ohio App. 2d 143;** June 13, 1966, Decided	Scurrilous Pamphlet ord. O.T.
Library rules & regulations must be reasonable & non-discriminatory.	Brown v. Louisiana 383 U.S. 131(1966)	Peaceful demonstration by blacks in a LA library
The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which neither forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. **Although courts regard all constitutional rights as important, they place particular emphasis on First Amendment rights. 16 Corpus Juris Secundum 1162, Constitutional Law, Section 214; 10 Ohio Jurisprudence 2d 532, Constitutional law, Section 458. Freedom of assembly is a First Amendment right, as set forth in the Constitution of the United States**	Cleveland v. Anderson 13 Ohio App. 2d 83 (1968)	Anderson convicted of 'participation in Disorderly Assemblies" O.T.
The 14th Amendment, as now applied to the states, protects the citizen against the state itself and all of its creatures (Boards of Education not excepted.) "But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, (1949); and our history says that it is this sort of hazardous freedom - this kind of openness - that is [393 U.S. 503, 509] the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society."	Tinker v. Des Moines School District 393 U.S. 503 (1969)	Black arm bands allowed in schools
Freedoms of speech and press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. **OVERTURNED WHITNEY V. CALIFORNIA**	Brandenburg V. Ohio 395 U.S. 444 (1969)	KKK conv.O
Gov't has no power to restrict expression because of its message, its ideas, its subject matter, or its content. "...the usual rule that governmental bodies may not prescribe the form or content of individual expression."	Cohen v. California 403 U.S. 13 (1971)	'Fuck the Draft' lettering on clothing in courthouse. Crim violation O.T.

later overturned by the USSC.	402 U.S. 611 (1971)	to Assemble
The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives. discriminations "must be tailored to serve a substantial governmental interest".	Police Dept. of Chicago v. Mosley 408 U.S. 92 1972	Chicago picketing ord is UNC.
"Someone (in Newton) might be so intemperate as to disrupt the peace because of this display. But if absolute assurance of tranquility is required, we may as well forget about free speech. Under such a requirement, the only 'free' speech would consist of platitudes. That kind of speech does not need constitutional protection."**We are also unable to affirm the judgment below on the ground that the State may have desired to protect the sensibilities of passersby. It is firmly settled that, under our Constitution, the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.** *State v. Kool*, 212 N. W. 2d, 518 1.	Spence v. Washington 418 U.S. 405 (WA, 1974)	A Freedom of Expression case; USSC Overturned conviction of 'flag desecration' statute.
No state may agreeably to the Constitution intercept a message and remove it from the channels of communication or punish its dissemination solely because of its content unless it is obscene.... constitutes "fighting words... or substantially and directly imperils national security. Moreover, the Constitution protects not only the substance of an expression but also the use of words selected for their emotive quality even though they may offend the tastes of the community....Although not every encounter between a citizen and a policeman warrants extended judicial scrutiny and review, the implications of this apparently inconsequential incident raise important questions about the constitutional guaranty of freedom of expression, and require us to determine the circumstances in which police officers may be required to respond in damages in an action brought under the Civil Rights Acts, 42 U.S.C. §§ 1983, 1985(3), for abridgement of rights guaranteed by the First and Fourteenth Amendments	Glasson v. City of Louisville 518 F. 2d 899 (KY) (1975)	Taking & destruction o a poster fror a peaceful protester.
As the language itself makes clear, the central purpose of 1983 is to "give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." Monroe v. Pape, 365 U.S. 167, 172 (1961) (emphasis added). The United States Constitution among other things, places substantial limitations upon state action, and the cause of action provided in 42 U.S.C. 1983 is fundamentally one for "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." United States v. Classic, 313 U.S. 299, 326 (1941). It is manifest then that all state [424 U.S. 409, 434] officials as a class cannot be immune absolutely from damage suits under 42 U.S.C. 1983 and that to extend absolute immunity to any group of state officials is to negate pro tanto the very remedy which it appears Congress sought to create. Scheuer v. Rhodes, 416 U.S. 232, 243 (1974). Thus, as there is no language in 42 U.S.C. 1983 extending any immunity to any state officials, the Court has not extended absolute immunity to such officials in the absence of the most convincing showing that the immunity is necessary. Accordingly, we have declined to construe 1983 to extend absolute immunity from damage suits to a variety of state officials, Wood v. Strickland, 420 U.S. 308 (1975) (school board members); Scheuer v. Rhodes, supra (various executive officers, including the State's chief executive officer); Pierson v. Ray, 386 U.S. 547 (1967) (policemen); and this notwithstanding the fact that, at least with respect to high executive officers, absolute immunity from suit for damages would have applied at common law. Spalding v. Vilas, 161 U.S. 483 (1896); Alzua v. Johnson, 231 U.S. 106 (1913). Instead, we have construed the statute to extend only a qualified	IMBLER v. PACHTMAN, 424 U.S. 409 (1976)	Civil immunity for a prosecutor Suggests that immunities are highly limited.

immunity to these officials, and they may be held liable for unconstitutional conduct absent "good faith." Wood v. Strickland, supra, at 315. Any other result would "deny much of the promise of 1983." Id., at 322. Nonetheless, there are certain absolute immunities so firmly rooted in the common law and supported by such strong policy reasons that the Court has been unwilling to infer that Congress meant to abolish them in enacting 42 U.S.C. 1983. Thus, we have held state legislators to be absolutely immune from liability for damages under 1983 for their legislative acts, Tenney v. Brandhove, 341 U.S. 367 (1951), 1 and state [424 U.S. 409, 435] judges to be absolutely immune from liability for their judicial acts, Pierson v. Ray, supra. 2 We emphasize that the immunity of prosecutors from [424 U.S. 409, 429] liability in suits under 1983 does not leave the public powerless to deter misconduct or to punish that which occurs.		
Banishment is punishment	Nixon v. Adm. Of Gen. Serv. 433 U.S. 425 (1977)	Ex Pres Nixon v. Govt archivist. Subj: access to pres. records.
First Amendment rights are truly precious and fundamental to our national life	Collin v. Smith 578 F2d 1197 (1978)	Collin = Nazi Smith = pres. Of Skokie IL Denial of permission to demonstrate; ords O.T.
Municipalities are persons under 42/1983; they are not immune. Moreover, § 1983 was intended not only to provide comp to the victims of past abuses, but to serve as a deterrent against future Const. deprivations, as well.	Monnell vs. NYC Dept. of Social Services. 436 U.S. 658 (1978)	Challenge to mandatory maternity leaves
It is well settled that the First and Fourteenth Amendments forbid discrimination in the regulation of expression on the basis of the content of that expression. "Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an `equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." Id., at 95-96	Carey v. Brown (1980), 447 U.S. 455, 463, 100 S. Ct. 2286, 65 L. Ed. 2d 263, fn. 7. See, also, *Burson*, 504 U.S. at 197, 112 S. Ct. 1846, 119 L. Ed. 2d 5, fn. 3 (plurality opinion).	Carey: IL anti-picketing statute is UNC.
Qualified immunity No qualified immunity available to a municipality or other similar governmental employer or policy making individual sued in his 'official capacity; under 42 USC 1983: "A municipality has no immunity from liability under 1983 flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability." But a municipality has no "discretion" to violate the Federal Constitution; its dictates are absolute and	Owen v. City of Independence 445 U.S. 622 (1980) Missouri	Owen: firing of a Police Chief Chief was dismissed without a hearing; Claimed loss – deprivation of his Due Process rights. (a) By its terms, 1983 "creates a species of tort liability that on its face admits of no immunities." Imbler v. Pachtman, 424 U.S. 409, 417 . Its language is absolute and unqualified, and n mention is made of any privileges, immunities, or defense that may be asserted. Rather, the statute imposes liability upon "every person" (held in Monell v. New York City Dept. of Social Services, 436 U.S. 658 , to encompass

imperative. A damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees, and the importance of assuring its efficacy is only accentuated when the wrongdoer is the institution that has been established to protect the very rights it has transgressed.		municipal corporations) who, under color of state law or custom, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." And this expansive sweep of 1983's language is confirmed by its legislative history. Pp. 635-636. [445 U.S 622, 623]
And as to the claimed justification that the ordinance in question is a reasonable "time, place, and manner" restriction, appellee does not identify its interests making it reasonable to exclude all live entertainment but to allow a variety of other commercial uses, and has presented no evidence that live entertainment is incompatible with the permitted uses. Zoning laws must be constitutional; live nude dancing is a (commercial) protected activity.	SCHAD v. MT. EPHRAIM, 452 U.S. 61 (NJ) (1981)	Nude films & live dancing in a commercia zone not sufficiently distinguished from othe commercial activities.
University of Missouri exclusion to speech – expression is unconstitutional… **the University has created a forum generally open for use by student groups. Having done so, the University has assumed an obligation to justify its discriminations and exclusions under applicable constitutional norms. 5 The Constitution [454 U.S. 263, 268] forbids a State to enforce certain exclusions from a forum generally open to the public, even if it was not required to create the forum in the first place… "fundamental principle that a state regulation of speech should be content-neutral"**	Widmar v. Vincent 454 U.S. 263 (MO, 1981)	Right to have a religious club, meeting: .
Inconvenience of having to dispose of unwanted paper is an acceptable burden at least so far as the Constitution is concerned. With respect to noncommercial speech, this Court has sustained content-based restrictions only in the most extraordinary circumstances. Less protection to commercial speech. **the government may not "reduce the adult population . . . to reading only what is fit for children."**	Bolger v. Young's Drug products D of Columbia 463 U.S. 60 (1983)	Mail distribution of birth control ads is allowed; Postal Reg. UNC.
Arroyo had a mural on side of store; Sign ordinance req. a prior permit is UNC. Protection against certain hazards or prohib. of obscenity would be allowed.	City of Indio v. Arroyo 143 Cal. App. 3d 151	Ord. is UNC.
Traditional public fora are defined by the objective characteristics of the property Compelling state interest cited	Perry Edun. Ass'n. 460 U.S. 37 (1983)	Use of school mailboxes by teachers union/association
"As a general matter peaceful picketing & leafletting are expressive activities involving speech protected by the first Amendment. Public Places, such as streets, sidewalks, and parks, historically associated with the free exercise of expressive activities, are considered, without more, to be public forums." "In such places, the government may enforce reasonable time, place, and manner regulations but additional restrictions, such as absolute prohibitions of a particular type of expression, will be upheld only if **narrowly drawn to accomplish a compelling governmental interest**." **"There is no doubt that as a general matter peaceful picketing and leafletting are expressive activities involving "speech" protected by the First Amendment"**	U.S. v. Grace 461 U.S. 171 (1983)	Picketing & leafletting on a sidewalk in front of the USSC. Statutes OVERTURNEI .
The ordinance is also vague and overbroad, the court believed, and establishes a prior restraint of speech. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be	AMERICAN BOOKSELLERS ASSOCIATION,	Indianapolis pornography ordinance

orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 642, 87 L. Ed. 1628, 63 S. Ct. 1178 (1943). "a state may not penalize speech that does not cause immediate injury" **"Much speech is dangerous**. Chemists whose work might help someone build a bomb, political theorists whose papers might start political movements that lead to riots, speakers whose ideas attract violent protesters, all these and more leave loss in their wake. **Unless the remedy is very closely confined, it could be more dangerous to speech than all the libel judgments in history."**	INC., et al., Plaintiffs- Appellees, v.WILLIAM H. HUDNUT, III, Mayor, City of Indianapolis, et al., Defendants-Appellants (IN, 1985)	is UNC.
Three types of fora	*Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.,* (1985)	Federal Empl fund raising.
Content neutral time, place, & manner regulations are acceptable so long as they are designed to serve a substantial gov't interest & do not unreasonably limit alternative avenues of communication. This was a 1,000 ft buffer ordinance. (This ruling was later criticized in Boos)	Renton v. Playtime Theatres Inc. 475 U.S. 41 (1986)	Ord. is Const.
Court may not pronounce sentence that is unconstitutional by statute	Ohio v. Bilder 39 Ohio app. 3d 135 (1987)	Public Indecency conviction OVERTURNED. Appellant could not be barred from the co. courthouse.
"...if a speaker's opinion causes offense, that consequence is a reason for according it Constitutional protection."	Hustler Magazine v. Falwell 485 U.S. 46 (1988)	Awd. for emotion distress Reversed.
The Renton analysis creates extensive dangers and uncertainty, and denies speakers the equal right to speak and listeners the right to an undistorted debate. **The traditional bright-line rule should continue to apply, whereby any restriction on speech, the application of which turns on the speech's content, is content-based regardless of its underlying motivation.** **As a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide "adequate `breathing space' to the freedoms protected by the First Amendment**	Boos v. Barry 485 U.S.312 (1988)	W.D.C. ordinance partially overturne
Gov't could be liable for failure to train when it acted recklessly, intentionally, or with gross negligence. City's failure to provide training to municipal employees resulted in the constitutional deprivation .. are cognizable under 1983 (only when) city's failure to train reflects deliberate indifference to the Constitutional rights of its inhabitants.	Canton v. Harris 489 U.S. 378 (1989) **AN OHIO CASE** Also see: Monroe v. Pape 365 U.S. 167 (1961)	Arrestee who had obvious maladies sued for failure to train; action sustained.Monroe/Pape: Chicago police entered a man's home, took him to jail without a warrant. UNC.
"If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." United States v. Eichman, 496 U.S. 310, 319 (1990) (quoting Texas v. Johnson, 491 U.S. 397, 414 (1989)).	Simon & Schuster, Inc. v. Members of the N.Y. St Crime Victims Bd 502 U.S. 105 (1991)	Simon & Schuster: 'Son of Sam' law Unc.
In cases of Fundamental Rights, Strict Scrutiny is the standard. "The choice of a standard of review in a substantive due process case turns on whether a "fundamental right" is implicated. The Justices of the Supreme Court were divided in Roe v. Wade and have continued to be divided over whether the right to an abortion is a fundamental right under the Due Process Clause. [FN1] Accordingly, they have disagreed over the proper standard to apply in reviewing abortion regulations. The majority in Roe concluded that abortion was a fundamental right and,	PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA**, et al.** v.ROBERT P. CASEY**,** et al.947	Abortion - Free Speech Freedom of Expression case

therefore, applied strict scrutiny review, the standard of review generally applied in fundamental rights cases."	F.2d 682(PA)(1991)	
The Ohio Constitution guarantees broader speech protections than the United States Constitution	Ferner v. Toledo-Lucas Co Conv. & Visitors Bur. 80 Ohio App. 3d 842(1992)	Right to solicit / distribute matls at a co. owned site upheld.
The OVERWHELMING sentiment of the USSC is in favor of Freedom of speech, regardless of the content or mode. The First Amendment generally prevents government from proscribing speech, see, e.g., Cantwell v. Connecticut, 310 U.S. 296, 309-311, 60 S.Ct. 900, 905-906, 84 L.Ed. 1213 (1940), or even expressive conduct, see, e.g., Texas v. Johnson, 491 U.S. 397, 406, 109 S.Ct. 2533, 2540, 105 L.Ed.2d 342 (1989), because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid.	R.A.V. v. St Paul 505 U.S. 382 (1992) Cantwell v. Connecticut 310 U.S. 296 (1940)	RAV: StPaul cross burning law Unc. Cantwell: JWs, Ct ordinance Unc; Convictions O.T.
"With the possible exception of avoiding litter, it is difficult to point to any problems intrinsic to the act of leafletting that would make it naturally incompatible with a large, multipurpose forum such as those at issue here..."	**Dissent** in Int'l Soc'y for Krishan Consciousness, Inc. v. Lee 505 U.S. 672 (1992)	Hare Krishna passing out flyers, soliciting for $ at an airport
The police must preserve order when unpopular speech disrupts it; "does it follow that the police may silence the rabble-rousing speaker? Not at all. The police must permit the speech and control the crowd; there is **no heckler's veto** Even when damages are slight, First Amendment cases should be Considered & Decided on their merits. **What a lesson Wauconda proposes to teach its students! Far better to teach them about the first amendment, about the difference between private and public action, about why we tolerate divergent views. Public belief that the government is partial does not permit the government to become partial**. Students therefore may hand out literature even if the recipients would misunderstand its provenance. The school's proper response is to educate the audience rather than squelch the spkr.	*Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993).	Distribution of religious literature at school.
The purpose behind the Federal Constitution's Bill of Rights, and of the First Amendment in particular, is to protect unpopular individuals from retaliation--and their ideas from suppression--at the hand of an intolerant society.	McIntyre v. Ohio Elections Comm. 514 U.S. 334 OH 1995	Anonymous pamphlets distribution is O.K.
As stated by a panel of this court, many times "the jury becomes the final arbiter of [defendants'] claim of immunity, since the legal question of immunity is completely dependent upon which view of the facts is accepted by [**19] the jury." *Brandenburg v. Cureton*, 882 F.2d 211, 215-16 (6th Cir. 1989).	**PRAY**, v. CITY OF **SANDUSKY**, et al., Defendants, PHILLIP FROST, Officer, **Sandusky** Police 49 F.3d 1154; 1995 U.S. App	Decision regarding immunity belong with the jury. Wrongful /Mistaken entry by police
Section 1135.02(d) simply is not narrowly tailored to achieve the city's legitimate stated goals, and is thus unconstitutional whether ultimately deemed to be content-based or content-neutral. Accordingly, we are constrained to find Section 1135.02(d) to be unconstitutional in violation of the First Amendment as applied to prohibit the owner of private property from posting on that property a single political sign, as defined in the ordinance, outside the durational limits set by the ordinance. The Painesville ordinance is not narrowly tailored to further the governmental interests asserted by the city of Painesville, nor do ample alternative means for communicating the desired message exist for such a property owner. Therefore it does not pass	City of Painesville Building Dept. v. Dworken 89 Ohio St. 3d 564	Ord. prescribing time periods for yard sign display in UNC.

constitutional muster even if assumed, *arguendo*, to be a content-neutral regulation of speech. **Strict scrutiny is employed to determine the constitutionality of a content-based regulation of protected speech**. That is, in order to justify a content-based regulation, the government is required to show a compelling interest in order to limit speech, and the regulation must be narrowly drawn to achieve that interest. *United States v. Playboy Entertainment Group, Inc.* (2000), 529 U.S. ____, ____, 120 S.Ct. 1878, 1886, 146 L.Ed.2d 865, 879. "With rare exceptions, content discrimination in regulations of the speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one." *Ladue,* 512 U.S. at 59, 114 S.Ct. at 2047, 129 L.Ed.2d at 50 (O'Connor, J., concurring).	(1997)	
"If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard, the defense should be sustained. But again, the defense would turn primarily on objective factors." *Harlow,* at 818-819.	Hicks v. Leffler 119 Ohio App. 3d 424 (1997)	Roadside arrest of a minor.
Even in a non-public forum, the city would have been required to demonstrate that its regulation of Esrati's conduct was not a viewpoint based effort to suppress expression	Dayton v. Estrati 125 Ohio App. 3d 60 (1997) **AN OHIO CASE**	Right to speak & express opinions in unconventional ways upheld.
Good differentiation between when content is a valid reason for restriction(s) on speech due to secondary effects/rationale.	Reno v. ACLU 521 U.S. 844 (1997)	Communications Decency act i UNC.
Strict scrutiny is applied when the government denies access to traditional and limited public fora	United Auto Workers Local Union 1112 et al., OH. Ed. Ass'n v. Philomena, Esq. et. 121 Ohio App. 3d 760; 700, 1998	Challenge to Ohio's 'Campaign Reform Act' SB8, 1995
Retaliatory motive	Worrell v. Henry 219 F. 3d 1197 (2000)	Worrell=Plnf-appellant. Says was offered employment then refused. Henry = D.A. 12th Dist. O.K. W. testified at a murder trial, Henry refused to honor the offer.S.J. angst Henry upheld, Not against others.
The right to free speech, of course, includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his audience. ... But the protection afforded to offensive messages does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it. **Even in a public forum, one of the reasons we tolerate a protester's right to wear a jacket expressing his opposition to government policy in vulgar language is because offended viewers can "effectively avoid further bombardment of their sensibilities simply by averting their eyes."** *Cohen* v. *California*, 403 U.S. 15, 21 (1971). **The regulation of such expressive activities, by definition, does not cover social, random, or other everyday communications.** **We are a social people, and the accosting by one of another in an inoffensive way and an offer by one to**	HILL v. COLORADO 530 U.S. 703 [June 28, 2000]	abortion related Anti-Demonstra on statute upheld

communicate and discuss information with a view to influencing the other's action, are not regarded as aggression or a violation of that other's rights. If, however, the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging, become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation. **"A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.** **Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.** *Chicago* v. *Morales*, 527 U.S. 41, 56—57 (1999)."		
But there [***34] is no authority for the proposition that a [*432] municipality may, by way of ordinance, add a penalty for violation of a *state criminal statute* that is not otherwise provided for by the General Assembly. The ord., therefore, is invalid under Section 3, Article XVIII Oh. Con. Supreme court of Ohio is not bound by rulings of federal statutory or Constitutional law made by a federal court other than the USSC.... The right of association encompasses two distinct types of freedoms: human relationships & expressive activities protected by the First Amendment.	Ohio v. Burnett 93 Ohio St. 3s 419 (2001)	Drug exclusion zone is UNC.
The standard for suppression of non-media opinions is a clear & present danger. **The power of a state to abridge freedom of speech & assembly is the exception rather than the rule. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the constitution...**Ohio has a separate & independent guarantee of protection for opinion ancillary to freedom of the press. Even cases of slight damages should be considered & Decided on their MERITS Majority Opinion: DISSENTING OPIOION: PFEIFER, J: In the end, W. may have suffered a few dollars worth of damages--or whatever the going rate is for an apology.	Wampler v. Higgins 93 Ohio St 3d 111 (2001)	P Wampler sued re a letter to the editor written by Higgins. Letter (speech/expression) is protected. Cites Vail v. Plain Dealer Pub Co 72 Ohi st. 3d 281 Scott v. News-Herald 25 Ohio St. 3d 253
Purpose behind the Bill of Rights and of the first Amendment in particular is to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society	MCCook v. Springer School Dist.01-2157 10th Circuit citing McIntyre v. Ohio Elections Commn 514 U.S. 334 (1995)	McC: a New Mexico case.J. McCook had downloaded some TV to a sch. dist. computer, was suspended /expelled. S. J. adverse to Plntf affirmed. McI: Election flyers w.out names are O.K
Premier 'Heckler's Veto' case. **The First Amendment "knows no heckler's veto." Lewis, 253 F.3d at 1082.**	Robb v. Hungerbeeler 370 F. 3d 735 (2003)	Missouri Adapt-a-highway, KKK. s.j.. granted to KKK, allowing Plaintiffs to participate in the highway clean-up program.
The First Amendment, applicable to the States through the Fourteenth Amendment, provides that "Congress shall make no law ... abridging the freedom of speech." The hallmark of the protection of free speech is to allow "free trade in ideas"-even ideas that the overwhelming majority of people might find distasteful or discomforting. **The First Amendment affords protection to symbolic or expressive conduct as well as to actual speech.** , the First Amendment "ordinarily" denies a State "the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence	Virginia v. Black 538 U.S. 343 2003	KKK Cross burning case

There are two types of First Amendment challenges that can be brought against a city policy, facial and as applied. n1 A facial challenge considers the restriction as a whole, while an as-applied challenge tests the application of that restriction to the facts of a plaintiff's concrete case. See Hawkins, 170 F.3d at 1286, 1290. Facial challenges seek to vindicate not only individual plaintiffs' rights but also those of all others who wish to engage in the speech being prohibited. See id. at 1286. n1 Our precedent allows facial challenges to unwritten policies. See, e.g., Wells v. City and County of Denver, 257 F.3d 1132, 1150 (10th Cir. 2001) (considering facial challenge to informal city display policy and noting that "the fact that Denver's policy is unwritten is not fatal, but merely a factor to be considered."); Hawkins, 170 F.3d at 1284 n. 2, 1286 (describing unwritten portion of policy and stating, "The First Amendment applies not only to legislative enactments, but also to less formal government acts, such as city policies.").	Faustin v. City & County of Denver et al. 423 F. 3d 1192	First A. challenge to gov't policies
In Ohio, immunity is ordained by the legislative act 2744.02 (B) (1). I will say: Prohibitions against violations of civil rights statutes and Constitutional protections would be empty without consequences coming to those who have violated them. This is not a concept or principle that our government proposes or supports. [*P7] In order to be a **peace officer** in Ohio, one must be appointed by an authorized appointing authority, such as a city, village, etc. An appropriately appointed individual must also be trained by a regulated OPOTC program. (Tr. p. 130.)	State of Ohio v. Taylor 2005 Ohio 6929 lexis 6240	Statutory Immunity is not absolute Rebuts state of Ohio's statement entered in this case.
"Listeners' reaction to speech is not a content-neutral basis for regulation." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134, 120 L. Ed. 2d 101, 112 S. Ct. 2395 (1992). "Speech cannot . . . be punished or banned, simply because it might offend" those who hear it. *Id.* at 134-35	Ovadal v. City of Madison 416 F. 3d. 531 WI 2005	Signs on overpass are Constitutionally protected.
The subsections of R.C. 2744.03(A) grant immunity to *either* the political subdivision *or* its employees, *not both*.	Elston v. Howland Local Schools 107 Ohio St. 3d 272 (2005)	School Liability case